

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT NASHVILLE

**FILED**

April 10, 1996

**Cecil W. Crowson**  
**Appellate Court Clerk**

**RILEY E. TURNER, AS ADMINISTRATOR  
OF THE ESTATE OF MARGARET BENEFIELD,**

Claimant-Appellant,

Claims Commission #205294

Vs.

C.A. No. 01A01-9508-BC00371

**STATE OF TENNESSEE,**

Defendant-Appellee.

FROM THE TENNESSEE CLAIMS COMMISSION

THE HONORABLE C. E. MURRAY, COMMISSIONER

J. P. Bradley of Waverly  
For Appellant

George H. Coffin, Assistant Attorney General  
For Appellee

***AFFIRMED***

Opinion filed:

**W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.**

**CONCUR:**

**DAVID R. FARMER, JUDGE**

**WILLIAM H. WILLIAMS, SENIOR JUDGE**

Plaintiff Riley E. Turner, administrator of the estate of Margaret Benefield, appeals from the order of the Tennessee Claims Commission that dismissed his suit for the wrongful death of Ms. Benefield.

Ms. Benefield, a pedestrian, was killed when she was struck by a vehicle driven by Ms. Joyce Davis. The accident occurred on February 24, 1992, after dark at approximately 6:25 p.m. at the intersection of Cooley Street and State Highway 70 (Bypass) in Waverly, Tennessee. At this intersection, the Bypass is a divided highway. The intersection is controlled by traffic control signals, but there are no designated crosswalks, no street lights, and no pedestrian signal lights or other pedestrian accommodations. At the time of the accident, Ms. Davis was proceeding in the left lane of the two-lane eastbound roadway. At trial, Ms. Davis testified that a traffic light controlling eastbound traffic was green for some time prior to her approach and entrance into the intersection. Ms. Davis testified that she saw Ms. Benefield only an instant before impact. The record reflects that Ms. Benefield was crossing the Bypass Highway from the north to the south in a diagonal manner, and she was struck approximately in the middle of the intersection. A diagram of the scene of the accident, including the approximate position of the Davis vehicle and Ms. Benefield, was introduced into evidence and is attached as an addendum to this opinion.

The Highway 70 Bypass is a "limited access" highway, and the traffic signal system on the Bypass is designed so that traffic on the Bypass will continually flow. The Bypass traffic signals which control both the eastbound and the westbound traffic are designed to stay continually green unless a vehicle enters one of the streets which intersect the Bypass. Once a vehicle reaches a certain proximity to an intersection of the Bypass, a sensor in the pavement changes the lights facing motorists on the Bypass from green to red thereby allowing traffic from the intersecting street to cross the Bypass. The testimony at trial indicates that traffic on the Bypass is stopped for varying lengths of time depending upon the number of vehicles which cross the Bypass. The length of the green light stopping the east-west traffic on the Bypass, and allowing the north-south traffic on Cooley Street to cross the Bypass, operated on the "sensor" system. That is, the length of the red lights facing the east-west Bypass traffic depended upon the number of cars on Cooley Street attempting to cross the Bypass; the length of the red light had nothing to do with pedestrian crossings.

Prior to the accident, Ms. Benefield was walking from her home in the Richland Avenue

community apparently attempting to reach downtown Waverly. Richland Avenue community is a small community predominately consisting of lower income families and the elderly. Due to the economic situation in the Richland community, many of the residents do not own automobiles and therefore, walk to the business district.

Before the Bypass was constructed and opened to traffic, Richland Avenue directly connected with the Waverly business district, and residents of the Richland community would walk on Richland directly to the downtown area. The Bypass traverses Richland Avenue, and once it was opened, it cut off Richland Avenue from the downtown business district. When the Bypass was opened, Richland Avenue simply ended at the Bypass, and Richland was fenced off. The record indicates that there was also a fence surrounding the Cooley-Bypass intersection, and that the fence was apparently designed to prevent pedestrians from crossing the Bypass in the vicinity of the intersection.

Apparently, the citizens of the Richland community and Waverly elected officials were very concerned about the closing of the Richland Avenue route to downtown Waverly, because it was the most direct route to downtown for pedestrians. As a result of this concern, the Humphreys County Commission passed a resolution in 1989 resolving that the county executive extend to city and state officials the citizens' concerns and their desire for a pedestrian overpass or other means of access to downtown Waverly from Richland Avenue. Acting on the resolution, Humphreys County Commissioner Robert Reid wrote a letter to then Department of Transportation Commissioner James M. Evans requesting that Richland Avenue remain a through street in order to avoid "severe problems for the residents of . . . [Richland Avenue]." The letter is undated, but was apparently written prior to the death of Ms. Benefield.

The Mayor of Waverly, Jess S. Bowen, also wrote a letter dated May 9, 1989, to Commissioner Evans requesting that additional lighting be installed on the Bypass in order to ensure public safety at thoroughfares. By letter dated June 12, 1989, Commissioner Evans responded that a safety study would be made after the Bypass was opened to traffic. There is no proof in the record as to whether state engineers actually performed a safety study once the Bypass was opened.

The testimony at trial indicates that there is a viaduct approximately 225 yards from the Bypass and Cooley Street intersection, and that the viaduct is essentially a bridge with a sidewalk which crosses over the Bypass. The viaduct is on State Highway 13 which intersects with Richland Avenue. The proof indicates that a pedestrian could reach the viaduct bridge from Richland Avenue by walking between a quarter and a half mile south on Richland to the point where Richland intersects with Highway 13. A pedestrian could then walk north another quarter to a half mile on Highway 13 to the viaduct and safely cross the Bypass. A pedestrian could also reach the viaduct by walking 225 yards west of the Cooley-Bypass intersection to the embanked base of the viaduct and then walking thirty to forty feet up an inclined embankment. There is proof that pedestrians living in the Richland Avenue community did not use the viaduct route, because it was not "directly on the path to go through town."

Following Ms. Benefield's death, her administrator brought this suit alleging that the state was negligent in designing, planning, and maintaining the Highway 70 Bypass and Cooley Street intersection, because the state knew that pedestrians frequently crossed the intersection, yet no pedestrian accommodations were ever installed or constructed in order to ensure the safety of pedestrians. After a hearing, the commissioner dismissed the plaintiff's claims, holding that the state was not negligent in the planning, maintenance, or design of the Bypass and intersection, because it was not foreseeable that a pedestrian would circumvent a barrier fence and attempt to cross a limited access highway that was not designed for pedestrian traffic. The commissioner also found that Ms. Davis, the driver of the van, was driving in a "safe legal manner" and was not negligent in connection with the accident. The commissioner concluded:

The record reflects that a pedestrian crossing (overpass) had been built at the time of the Highway 70 By-Pass construction to accommodate pedestrian traffic from one side of that limited access highway to the other. This overpass is located approximately 1/8 to 1/4 mile to the West of the accident scene at the intersection of Cooley Street and Highway 70 By-Pass. However, Ms. Benefield would be required to walk a considerable additional distance, some of which was uphill, from her home to use the crossing provided for and designed for the use of pedestrians.

It is concluded Ms. Benefield elected to attempt crossing the limited access Highway 70 By-Pass at a point not designed for pedestrian crossing, rather than proceed to and use the safe pedestrian crossing provided, even though it would have added

considerable distance to her travel route across Highway 70 By-Pass. Her choice to proceed along a dangerous path, with which she was familiar, as opposed to the more lengthy but safe path, is concluded to have resulted in this tragic accident.

It is concluded that Ms. Benefield's actions constituted negligence amounting to more than 49 percent of the negligence resulting in this accident.

Therefore claimant is barred from recovery under the doctrine of comparative negligence established by the Court in *McIntyre v. Balentine*, 833 S.W.2d 52 (1992).

Plaintiff has appealed, and the only issue presented for review is whether the trial court erred in not ruling that the state was negligent in the construction and design of the intersection.

After reviewing the record in this case, we do not find that the issue presented for review is the dispositive issue in this appeal. The dispositive issue is whether the evidence preponderates against the trial court's finding that Ms. Benefield was more than forty-nine percent at fault in causing the accident that resulted in her death.

This is a direct appeal from the Tennessee Claims Commission and is governed by the Tennessee Rules of Appellate Procedure. T.C.A. § 9-8-403(a)(1)(1992). Our review of the commissioner's findings is *de novo* upon the record of the commission with a presumption of the correctness of the commissioner's factual findings. We must affirm the decision of the commissioner, unless there is an error of law or the evidence preponderates against the findings of the commissioner. T.R.A.P. 13(d); *Sanders v. State*, 783 S.W.2d 948 (Tenn. App. 1989).

T.C.A. § 9-8-307(a)(1)(l)(Supp. 1995) provides in pertinent part:

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state falling within one (1) or more of the following categories:

\* \* \*

(I) Negligence in planning and programming for, inspection of, design of, preparation of plans for, approval of plans for, and construction of, public roads, streets, highways, or bridges and similar structures; and negligence in maintenance of highways, and bridges and similar structures, designated by the department of transportation as being on the state system of highways or the state system of interstate highways . . . .

T.C.A. § 9-8-307(a)(1)(C) provides that a party suing under this subsection "must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures. . . ." The state's liability "shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care." T.C.A. § 9-8-307(c)(Supp. 1995). To prevail in a suit for negligence, a plaintiff must establish a duty of care owed by the defendant to the plaintiff; conduct falling below the applicable standard of care amounting to a breach of that duty; injury; causation in fact; and proximate causation. *Bradshaw v. Daniel*, 854 S.W.2d 865, 869 (Tenn. 1993).

The commissioner found that plaintiff's decedent was negligent in crossing at this particular intersection, because the intersection was at least partially fenced to pedestrian traffic. The commissioner also noted that there was a viaduct across the Bypass in fairly close proximity to the accident intersection, and that Ms. Benefield was negligent because she "[chose] to proceed along a dangerous path with which she was familiar, as opposed to the more lengthy but safe path [i.e., the viaduct]." We could discuss at some length the reasonableness or the unreasonableness of the alternative route and perhaps try to more precisely determine plaintiff's negligence for failure to utilize the alternative route. However, it is unnecessary to reach these issues, because the proof is uncontroverted that Ms. Benefield was crossing the Bypass highway against a red traffic signal.

Ms. Davis, the driver of the van, testified that at the time she approached the intersection and at the time she drove through the intersection immediately prior to colliding with Ms. Benefield, the intersection light facing eastbound traffic was green. The commissioner apparently found Ms. Davis's testimony to be credible, because in his order dismissing plaintiff's claim, he specifically found that Ms. Davis crossed Cooley Street under a green light. Implicit in this finding is that the lights facing northbound and southbound traffic on Cooley Street were red at the time of the collision. The record indicates that Ms. Benefield was crossing the intersection diagonally from northwest to southeast, thus she proceeded in a partially southern direction when the light facing southbound traffic was red. Pedestrians are subject to traffic

signals at intersections,<sup>1</sup> and Ms. Benefield's decision to cross the intersection against a red light was negligent which was at least equal to or greater than the negligence, if any, of the State.

Accordingly, the order of the claims commissioner is affirmed. Costs of this

appeal are assessed against appellant.

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**W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.**

**CONCUR:**

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**DAVID R. FARMER, JUDGE**

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**WILLIAM H. WILLIAMS,  
SENIOR JUDGE**

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T.C.A. § 55-8-133 (1993) provides:

55-8-133. **Pedestrians subject to traffic regulations.** - (a) Pedestrians shall be subject to traffic-control signals at intersections as provided in § 55-8-110, and at all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter and chapter 10, parts 1-5 of this title.

T.C.A. § 55-8-135 (1993) provides in pertinent part:

**55-8-135. Crossing at other than crosswalks.** - (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.